HIAP YIAK TRADING SDN. BHD. & ORS.

v.

HONG SOON SENG SDN. BHD.

HIGH COURT MALAYA, MUAR
RICHARD TALALLA JC
[ORIGINATING MOTION NO. 25-11 OF 1989]
25 FEBRUARY 1990

LAND LAW: *Caveat lodged by defendant to preserve status quo until trial of action - Defendant's earlier caveat withdrawn voluntarily - Question whether second caveat can be lodged.*

The defendants are registered proprietors of land held under EMR Lot No. 3019 Mukim of Jalan Bakri, District of Muar, Johor. The plaintiffs claim that the first 4 plaintiffs were purchasers of the land which they subsequently sold to the 5th plaintiff. Proceedings have been commenced by the defendants in Muar High Court civil suit no. 56 of 1988 in respect of the claim.

In the meantime, defendants in the present proceedings caused a caveat to be registered against the land to protect their interest until such time that the Muar High Court civil suit no. 56 of 1988 is disposed of.

The defendants claimed that in 1980, the land was charged to United Asian Bank (the bank) as security for a loan of RM400,000. When they defaulted under the charge the bank obtained an order from the Pemungut Hasil Tanah, Muar for sale of the land by public auction.

The defendants then entered into an agreement with the plaintiffs to borrow money from them to prevent the land from being auctioned. However instead of a loan agreement being drawn up a sale agreement was entered into. Under the sale agreement the defendants were given the option to repurchase the said land by payment of certain sums within a specified date to the plaintiff.

The defendants were unable to pay the monies to the plaintiffs even after extended time periods were given by the plaintiffs.

Meanwhile the title deed to the land after being discharged by the bank was handed to the common solicitors. No transfer was executed and the title remained in the name of the defendants.

The plaintiffs applied *inter alia* for an order that the caveat registered by the defendants against the land be removed. They argue, *inter alia,* that the defendants had lodged an earlier caveat which they subsequently withdrew voluntarily and that it was now not open to them to lodge a second caveat, the second caveat being effectively the same as the first.

Held:

[1] The defendants were entitled to cause a caveat to be registered against the land notwithstanding they are the registered proprietors of the land.

[2] The defendants were entitled to lodge a second caveat against the land even though it is effectively the same as the first.

[3] The status quo should remain and accordingly the defendant's caveat should stand unremoved a sthere are issues to be tried. The defendant's have discharged the onus placed on them.

[Application dismissed.]

Cases referred to:
Societe Generale v. Good Property Land Development Pte. Ltd. [1989] 2 MLJ 24
Eng Mee Yong & Ors. v. V. Letchumanan [1979] 2 MLJ 212
Hock Hin Bros. Sdn. Bhd. v. Low Yat Holdings Sdn. Bhd. [1983] CLJ (Rep) 584

For the 1st, 2nd, 3rd and 4th plaintiffs - Subra Naicker; M/s. Subra Naicker & Co.
For the 5th plaintiff - Wong Kim Fatt; M/s. Gulam & Wong
For all the plaintiffs - E. Ramasamy; M/s. E. Ramasamy & Co.
For the defendant - A.K. Yeong; M/s. A.K. Yeong & Co.

JUDGMENT

Richard Talalla JC:

The defendants are the registered proprietors of certain land held under EMR 3261 Lot No. 3019 Mukim of Jalan Bakri in the District of Muar in the State of Johor (the land). The plaintiffs claim that the first 4 plaintiffs were purchasers of the land which they subsequently sold to the 5th plaintiff.

The defendants deny selling the land at all. They say that the agreement by virtue of which the first 4 plaintiffs claim to have purchased the land from them is in fact a sham and that the true transaction was one in which they borrowed money from the 1st plaintiff (Hiap Yiak). The defendants say that they have no knowledge of the 2nd, 3rd and 4th plaintiffs other than that they are named as purchasers in the sham agreement.

In support of their allegation the defendants state that in 1980 the land stood charged to United Asian Bank Berhad (the bank) as security for a loan of RM400,000 which they had obtained from the bank. They defaulted under the charge. On 18 March 1984 the bank obtained an order from Pemungut Hasil Tanah, Muar, for the sale of the land by public auction to recover a sum of RM338,194.81. The auction was to take place on 23 April 1984.

The defendants were in a quandary. Somehow they had to get hold of funds to pay off the bank to save the land from being auctioned. How were they to get the money to do this? The obvious source was a money lender. Which money lender? Hiap Yiak of course, because the defendants had borrowed from them before. They went to Hiap Yiak. They were in no position to bargain. Hiap Yiak were in a position to dictate terms, and they did. Instead of a loan agreement being drawn up, a sale agreement was entered into. It was dated 21 April 1984, two days before the auction date. The agreement provided for a sale price of RM400,000 of which RM100,000 was to be paid forthwith to the bank and this was in fact done through solicitors acting for both parties that is to say the vendor and the purchasers. As to the balance of the purchase price of RM300,000, RM240,000 was to be paid on 20 May 1984 direct to the bank. The final balance purchase price of RM60,000 was to be paid on 20 October 1985. There was a strange term in the sale agreement which was an option to buy back the land by way of the defendants returning RM340,000 to the first 4 plaintiffs and an additional sum of RM100,000 which last sum was said to be agreed compensation and/or pre determined damages to the first 4 plaintiffs, the option to be exercised on or before 20 October 1984 before payment. The agreement provided alternatively for the defendants to pay a sum of RM100,000 on or before 20 October 1984 and thereby have the option to repurchase extended till 20 October 1985 but in this event the defendants would have to pay the 4 plaintiffs, apart from the sum of RM340,000 received, a sum of not merely RM100,000 but at that point of time RM240,000 as so called agreed compensation and/or pre determined damages, thus requiring the defendants to pay the 4 plaintiffs a total sum of RM680,000.

The defendants were not able to pay any monies on or before 20 October 1984 to the end that option be exercised or extended. So, two days later that is to say on 22 October 1984, the parties entered into a supplementary agreement whereby the time for payment of the sum of RM100,000 for the extension of the option was extended to 20 December 1984. Still the defendants could not pay. A third document was drawn up. It was entitled an Agreement of sale of land and dated 22 April 1985. That agreement provided for sale of the land as in the first agreement but this time at a total price of RM340,000 with an option to repurchase on or before 20 October 1985 at a sum of RM500,000. The defendants again did not have the money to exercise the option.

The title deed to the land, after discharge by the bank of the charge, was handed to the common solicitors who apparently are holding it at this point of time. No transfer has been executed. The title remains in the name of the defendants.

It seems to me more than a coincidence that time relative to the auctioning of the land and the money transaction between the first 4 plaintiffs and the defendants dovetailed, as did the amounts payable under the charge to the bank and the monies advanced by the first 4 plaintiffs to the bank through the common solicitors, albeit as alleged part payment of the price of the land. The amounts described in the various transactions between the first 4 plaintiffs and the defendants as compensation and/or predetermined damages cry out for trial as to whether those amounts are in truth and fact compensation or damages and if so compensation or damages for what? Or do the amounts represent interest?

The defendants claim that under normal circumstances there is no way that they would have sold the land for RM400,000 as stated in the agreement. They say that it is amply evident that the land was at all material times worth RM700,000, the reserve price of the land fixed by the Pemungut Hasil Tanah being RM700,000. Furthermore the defendants produced a valuation by a licensed valuer and appraiser whereunder the land was valued at RM700,000.

The defendants in Muar High Court civil suit no. 56 of 1988 commenced proceedings in which they pleaded *inter alia* the facts above stated and claimed the return of the land to them. Those proceedings are still on foot.

In order to protect their interest in the land the defendants caused a caveat to be registered against it. It would appear that they were entitled to do so notwithstanding that they are the registered proprietors of the land. See the case of *Societe Generale v. Good Property Land Development Pte. Ltd.* [1989] 2 MLJ 24.

In these proceedings the plaintiffs applied *inter alia* for an order that the caveat be removed. That being the case it fell upon the defendants to satisfy the Court that on the evidence presented their claim to the land raises a serious question to be tried. Having done so, the defendant must show that on the balance of convenience it is better to maintain the *status quo* until the trial of the action, by preventing the plaintiffs from disposing of the land to some third party. See the well known Privy Council case of *Eng Mee Yong & Ors. v. V. Letchumanan* [1979] 2 MLJ 212 at p. 215.

I am satisfied that the onus placed on the defendants has been discharged. There was, to say the least, *prima facie* evidence that the land had a value of RM700,000. Why then would the defendants sell it for RM400,000? That question, let alone other matters, demands judicial inquiry.

It was argued on behalf of the plaintiffs that the defendants had lodged an earlier caveat which they subsequently withdrew voluntarily and that having done so it was not open to them to lodge a second caveat, the second caveat being effectively the same as the first. Unfortunately for the plaintiffs the decision of Edgar Joseph J in *Hock Hin Bros. Sdn. Bhd. v. Low Yat Holdings Sdn. Bhd.* [1983] CLJ (Rep) 584, with which I respectfully agree, is against them.

I take the view that the *status quo* should remain and accordingly the defendants' caveat should stand unremoved.

I dismiss the plaintiffs' application with costs to be taxed if not agreed.

Also found at [1990] 1 CLJ 912